

APPEAL NO. 93008
FILED FEBRUARY 10, 1993

A contested case hearing was convened at (city), Texas, on November 4, 1992, with (hearing officer) presiding as hearing officer. The appellant (claimant) did not appear although the hearing officer determined that he had been appropriately notified of the hearing date, time and place. Accordingly, the hearing officer determined that the claimant did not meet his burden of showing that he sustained a compensable injury while in the course and scope of his employment and denied the claimant any benefits under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq.* (Vernon Supp. 1993) (1989 Act). Claimant appeals, asking generally that the Appeals Panel "plainly look into it" and find that what he says is true and pointing out that he had been under another doctor's care for a previous injury. Respondent (carrier) urges that the appeal is not timely hence no jurisdiction attached and that, in any event, the hearing officer's decision was correct.

DECISION

The decision of the hearing officer is affirmed.

According to the file in this case, the decision of the hearing officer was mailed to the parties on November 30, 1992. Giving the maximum time for mail to be received as provided under the Commission Rules (Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(h) & 102.3(a)(3) the date of receipt would be deemed to be December 7, 1992. (There is no other time indicated). Applying the statutory time for filing a request for review which is "not later than the 15th day after the date on which the decision of the hearing officer is received" (Article 8308-6.41(a)), the latest date for appealing would be December 22, 1992. The envelope in which the request for review was sent to the Commission clearly shows a posting date of December 22, 1992, hence it is determined to be timely. See *generally*, Texas Workers' Compensation Commission Appeal No. 92219 decided July 15, 1992; Texas Workers' Compensation Commission Appeal No. 92223, decided July 13, 1992.

The file in this case shows that the claimant requested a continuance from an earlier scheduled hearing date of October 7, 1992 and that a new date of November 4, 1992 was scheduled and all parties accordingly notified. The claimant did not appear and the hearing proceeded in his absence. The hearing officer marked as a hearing officer's exhibit and considered the benefit review conference report which stated the positions of the parties at the conference and forwarded the disputed issue of whether an injury was sustained in the course and scope of employment. The hearing officer also marked as an exhibit and considered a note signed by the claimant which is set out below:

10-24-92

To Whom it May Concern:

I (claimant) no longer want to pursue (sic) my case Docket No. FW-92-127961-01-CC-FW42 that is set for November 4, 1992.

This is my notice to let you know my decision on this matter.

Thank you

Sincerely
(signed)

The carrier declined to offer any evidence since the claimant had the burden of proof. The carrier did note on the record that the claimant had failed or refused to respond to the carrier's interrogatories in this case. The hearing thus concluded.

Under the circumstance, the hearing officer's determination that the claimant did not offer any probative evidence and failed to sustain his burden of proof was compelled. Nothing has been brought forth on appeal to warrant a new hearing or any further action in this case.

The decision is affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Thomas A. Knapp
Appeals Judge